

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Electronic Delivery of MVPD)	
Communications)	MB Docket 17-317
)	
)	
Modernization of Media)	MB Docket No. 17-105
Regulation Initiative)	
)	

**COMMENTS OF AMERICA’S PUBLIC TELEVISION STATIONS,
CORPORATION FOR PUBLIC BROADCASTING, AND
PUBLIC BROADCASTING SERVICE**

SUMMARY

America’s Public Television Stations, Corporation for Public Broadcasting, and Public Broadcasting Service (collectively, “Public Broadcasting”) file these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking to modernize FCC rule requirements for broadcast television station notifications to MVPDs.¹ This NPRM is related to the Commission’s Modernization of Media Regulation Initiative (MB Docket 17-105).

Public Broadcasting fully supports modernizing the broadcaster notice process for MPVD carriage elections, as well as correcting a misalignment between the cable and DBS election requirements that unnecessarily burdens noncommercial educational television (NCE-TV) stations.

¹ *Electronic Delivery of MVPD Communications*, MB Docket No. 17-317 (rel. December 14, 2017) (“NPRM”).

COMMENTS

America's Public Television Stations ("APTS")², Corporation for Public Broadcasting ("CPB")³, and Public Broadcasting Service ("PBS")⁴ (collectively, "Public Broadcasting") submit these comments in response to the Federal Communications Commission's NPRM proposing, inter alia, to modernize broadcaster notifications to MVPDs for carriage elections. Public Broadcasting strongly supports modernizing communications between television stations and MVPDs to permit alternative delivery methods (including digital communications) for the carriage election process (which impacts all TV broadcasters, commercial and NCE-TV). As set forth in its earlier comments in the Media Modernization Initiative, Public Broadcasting also supports eliminating a misalignment between the carriage election process for satellite carriers and cable operators that is unique to NCE-TV stations.

Delivery of Election Notices. Every three years, NCE-TV stations are required by FCC rules to re-notify satellite carriers and renew their requests to continue to be carried by the satellite carrier.⁵ Failure to make such notifications subjects the NCE-TV

² APTS is a non-profit organization whose membership comprises the licensees of nearly all of the nation's CPB-qualified noncommercial educational television stations. The APTS mission is to support the continued growth and development of a strong and financially sound noncommercial television service for the American people.

³ CPB is a private, non-profit corporation created and authorized by the Public Broadcasting Act of 1967 to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars in grant monies for support and development of public broadcasting stations and programming.

⁴ PBS, with its 350 member stations across the country, offers all Americans the opportunity to explore new ideas and new worlds through television and online content. Each month, PBS reaches nearly 100 million people through television and nearly 30 million people online, inviting them to experience the worlds of science, history, nature and public affairs; to hear diverse viewpoints; and to take front row seats to world-class drama and performances.

⁵ As discussed elsewhere in these Comments, NCE-TV stations are not required to re-notify or renew their carriage requests for other MVPD carriage, including cable carriage. Such carriage simply continues absent a change in carriage circumstances.

station to a denial of carriage by the satellite operator for the next three-year election cycle.⁶ At present, Section 76.66(b) of the FCC rules requires that NCE-TV stations renew their carriage requests using a very specific delivery method:

“An election request made by a television station must be in writing and sent to the satellite operator’s principal place of business, by certified mail, return receipt requested.”⁷

Thus, failure to use the specified certified mail delivery method can result (and has resulted) in loss of satellite carriage—a game of regulatory “gotcha” with the draconian result of loss of NCE-TV satellite carriage rights for a three-year period. For example, the FCC’s Policy Division recently decided that an NCE-TV station’s carriage election was improper because it was not sent certified mail, return receipt requested (and instead used a faster, even more reliable delivery method offered by the U.S. Postal Service); the Policy Division ruled that the notice was insufficient even though the satellite carrier had received actual notice of the NCE-TV station’s carriage request.⁸

In today’s world, FCC’s rules for broadcaster notifications to MVPDs should not specify “certified mail, return receipt requested”⁹—electronic communications (including by email) should be permitted, as should traditional non-USPS (FedEx, UPS, etc.) and USPS delivery services (USPS Priority Mail), including overnight services. Any of these methods should be deemed sufficient for purposes of the FCC’s carriage election process, provided that the method used allows the broadcaster to demonstrate timely

⁶ See 47 CFR § 76.66(d)(v).

⁷ 47 CFR § 76.66(d)(i).

⁸ *In re Minority Television Project, licensee of Noncommercial Television Station KMTP, Channel *32, San Francisco, California v. DISH Network, L.L.C.*, CSR-8946-M, MB Docket 17-313 (rel. January 23, 2018)

⁹ To send certified mail, return receipt requested, a broadcaster must take the election notice to the post office (during post office hours), fill out certified mail forms by hand, apply a certified mail tracking barcode to the letter, perhaps wait in line, and present the finished product to the postal clerk for the clerk to calculate charges and collect payment. Other hard copy mail delivery services are less cumbersome.

delivery to the MVPD by the election deadline. The key regulatory points are actual notice to the MVPD and the broadcaster's ability to demonstrate election by the deadline (not the method of delivery). Public Broadcasting notes that the FCC's own rules for business before the agency show a preference for electronic communications, and, in many instances, require that filings and other communications be made electronically.¹⁰ In February 2017 and in conjunction with the world's first-ever voluntary spectrum auction, when the FCC sent highly confidential letters to TV broadcasters with time-sensitive post-auction channel assignments, the FCC chose to send the materials by UPS, not by "certified mail, return receipt requested."

If the FCC is using more modern methods for its business and its own very important communications, the FCC rules should certainly permit TV broadcasters to use those methods, too. There is absolutely no reason that the carriage election process should set forth a specific (and cumbersome) delivery method—especially one that is misused for regulatory "gotchas." The FCC should permit use of any reasonable delivery method for carriage election notices, provided that the method can confirm delivery.

Misalignment of Satellite Carrier and Cable Operator Election Process for NCE-TV. This NPRM presents an opportunity for the FCC to correct a long-standing rule misalignment between the satellite carrier election process and the cable operator election process as applied to NCE-TV stations.

¹⁰ See 47 CFR § 1.49(f).

By statute, NCE-TV stations do not have retransmission consent rights – only mandatory carriage rights.¹¹ Section 325(b) of the Communications Act provides, in pertinent part:

- (b) Consent to retransmission of broadcasting station signals
- (1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except—
 - (A) with the express authority of the originating station;
 - (B) under section 534 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section; or
 - (C) under section 338 of this title, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.
- (2) This subsection shall not apply—
 - (A) to retransmission of the signal of a noncommercial television broadcast station;¹²

The FCC’s cable carriage rules, recognizing that NCE-TV stations cannot make periodic “election” choices between retransmission consent and mandatory carriage (because there is only one choice available—mandatory carriage), do not require periodic elections to cable operators by NCE-TV stations.¹³ Instead, once an NCE-TV station requests mandatory carriage from a cable operator, the carriage request continues, absent a change in circumstances. Thus, there is no requirement that NCE-TV stations “re-elect” mandatory carriage on cable for every three-year cycle.¹⁴

In contrast, for satellite broadcast signal carriage, Section 76.66(c)(5) of the FCC rules requires that NCE-TV stations must periodically renew their carriage requests on

¹¹ Therefore, NCE-TV stations are not subject to contentious retransmission consent disputes.

¹² Section 325(b) of the Communications Act.

¹³ See 47 CFR § 76.64(h) (adopted in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 3003 (1993)).

¹⁴ *Id.*

the same three-year cycles applicable to commercial TV stations.¹⁵ NCE-TV stations, therefore, must engage in a rote process, every three years, of “electing” mandatory carriage for satellite carriage, despite NCE-TV stations having no other option to select.

When the Commission adopted Section 76.66(c)(5) in 2000, it stated, without explanation: “Noncommercial educational television stations must request carriage on the same dates as commercial television stations, even though they are not subject to an election cycle.”¹⁶ There is no apparent regulatory benefit to requiring an NCE-TV station to re-request satellite carriage (its only statutorily available carriage option) every three years; its prior election of mandatory election to a satellite operator should continue absent a change in satellite carriage circumstances. The obligation to re-file satellite carriage requests every three years for NCE-TVs should be eliminated.

Public Broadcasting notes that the statute governing carriage of local television stations by satellite carriers, 47 USC Section 338, does not compel periodic elections by NCE-TV stations. In fact, Section 338(j) requires the FCC to regulate with “requirements on satellite operators that are comparable to the requirements on cable operators” under the statute governing carriage of noncommercial educational television stations. Public Broadcasting’s proposed changes would better align the requirements on satellite operators and cable operators.

¹⁵ 47 CFR § 76.66(c)(5) (adopted in Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues, Report and Order, 16 FCC Rcd 1918, 1932 (2000)).

¹⁶ *Id.* at para. 9.

CONCLUSION

The FCC should modernize its cable and satellite carriage election processes to permit electronic notifications as well as other hard copy delivery methods, so long as the broadcaster has the ability to demonstrate receipt of the notice by the appropriate deadline. The FCC should also align the NCE-TV satellite carriage election process with the cable carriage election process by eliminating the requirement that NCE-TV “elect” their only satellite carriage option every three years.

These changes will have a meaningful benefit in reducing the regulatory burdens on NCE-TV stations without any adverse impact on overall cable or satellite carriage election processes or the rights of cable and satellite operators.

Respectfully submitted,

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